

ARKANSAS SUPREME COURT

No. CR 08-994

Opinion Delivered October 30, 2008

RUFFUS GRAY
a/k/a RUFUS GRAY
Petitioner

v.

STATE OF ARKANSAS
Respondent

PRO SE MOTIONS FOR BELATED
APPEAL AND TO SUPPLEMENT
MOTION FOR BELATED APPEAL
[CIRCUIT COURT OF CLARK
COUNTY, CR 2004-217, HON. JOHN A.
THOMAS, JUDGE]

MOTIONS DENIED.

PER CURIAM

On February 1, 2008, petitioner Ruffus Gray, who is also known as Rufus Gray, was found guilty by a jury of attempted rape and sentenced to 560 months' imprisonment. A fine of \$7,500 was also imposed. Judgment was entered-of-record on February 27, 2008. No appeal was taken, and petitioner now seeks leave to proceed with a belated appeal pursuant to Rule 2(e) of the Rules of Appellate Procedure—Criminal. In the motion he contends that his retained attorney Louis Loyd knew of his desire to appeal from the judgment and wrongfully abandoned the appeal. Petitioner subsequently tendered the statements of two persons and asks this court in a separate motion to be allowed to supplement the motion for belated appeal with the statements. Petitioner also filed two additional motions to supplement the motion for belated appeal with claims of ineffective assistance of trial counsel, prosecutorial misconduct at trial, and trial error.

The three motions to supplement the motion for belated appeal are denied. The two

statements mentioned in the initial motion to supplement consist of claims that the persons could have been called by the defense as witnesses at trial, but neither statement offers information pertinent to the issue of whether petitioner has met his burden of demonstrating that he is entitled to a belated appeal. Likewise, the two motions claiming that counsel was ineffective, that the prosecutor's conduct was improper and that the court erred in its rulings do not bear on the question of whether petitioner should be permitted to pursue a belated appeal.

It is the practice of this court when a pro se motion for belated appeal is filed and the record does not contain an order relieving trial counsel to request an affidavit from the trial attorney in response to the allegations in the motion. There was no order relieving Mr. Loyd in the partial record submitted by petitioner and filed with the motion for belated appeal in this case. This affidavit is required because Rule 16(a) of the Rules of Appellate Procedure--Criminal provides in pertinent part that trial counsel, whether retained or court appointed, shall continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause.

In his affidavit Mr. Loyd avers that he received a letter from petitioner shortly after he was convicted asking that Loyd withdraw as his attorney. Loyd states that he met with petitioner, advised him that he would agree to withdraw and explained the need for a timely notice of appeal to be filed if petitioner desired to appeal. Loyd then filed a motion to be relieved as counsel, which was granted by the court in an order entered February 20, 2008. A certified copy of the order was appended to Mr. Loyd's affidavit.

Here, counsel was duly relieved by the trial court before the judgment of conviction was entered. Because counsel was allowed to withdraw as petitioner's attorney, he was not responsible

for perfecting an appeal. Once counsel was relieved, the burden was on petitioner, if he was incapable of proceeding pro se on appeal and desired representation by counsel, to retain other counsel. If he had become indigent since retaining Loyd, it was his responsibility to file in the trial court a motion for appointment of counsel with his affidavit of indigency appended. He neither retained other counsel nor sought appointment of counsel, and he has failed to establish that there was good cause for his failure to perfect the appeal. A belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). Accordingly, the motion for belated appeal is denied.

Motions denied.